

Internal Revenue Service

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Attn:

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B06

PLR-118019-09

Date:

August 05, 2009

Legend:

Taxpayer =

Fund =

Escrow Agent =

Court =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Litigation =

X =
Claim =

Agreement =

Stipulation =

Y =

Dear :

This letter responds to your request dated March 31, 2009, requesting a ruling on behalf of Taxpayer. Specifically, you request an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a “relation-back” election under § 1.468B-1(j)(2)(ii) of the Income Tax Regulations.

Facts

Beginning in Date 1, X asserted Claim against Taxpayer. On Date 2, Taxpayer and X entered into Agreement that settled Litigation. Pursuant to Agreement, Taxpayer paid \$Y into an escrow account (the Fund) on Date 3.

Pursuant to Agreement and the Stipulation filed with Court on Date 5, Taxpayer and Fund were to treat the Fund as a qualified settlement fund under § 468B of the Internal Revenue Code and the Income Tax Regulations thereunder. Taxpayer and Escrow Agent were required by the Stipulation to make any necessary elections, including a relation-back election under § 1.468B-1(j)(2), to satisfy the requirements for a qualified settlement fund under § 468B. On Date 6, Court entered the preliminary order approving the Stipulation and ordering that Fund was to be under the continuing jurisdiction of Court.

Fund included a proper relation-back election statement on its first timely filed income tax return. However, Taxpayer did not attach the relation-back election statement to its taxable year ending Date 4 income tax return. Taxpayer subsequently filed an amended taxable year ending Date 4 income tax return on Date 7 that had the relation-back election statement attached. The statute of limitations had not expired on the taxable year ending Date 4 as of Date 7.

Law and Analysis

Section 1.468B-1(a) provides that a qualified settlement fund is a fund, account, or trust that satisfies all three requirements of § 1.468B-1(c). First, § 1.468B-1(c)(1) requires that the fund, account, or trust is established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority. Second, § 1.468B-1(c)(2) requires that the fund, account, or trust is established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event (or related series of events) that has occurred and that has given rise to at least one claim asserting liability (i) under the Comprehensive Environmental Response, Compensation and Liability Act of 1980; (ii) arising out of a tort, breach of contract, or violation of law; or (iii) designated by the Commissioner in a revenue ruling or revenue procedure. Third, § 1.468B-1(c)(3) provides that the fund, account, or trust must be a trust under applicable state law, or its assets must be otherwise segregated from other assets of the transferor (and related persons).

Section 1.468B-1(j)(1) provides, in part, that on the date the fund, account, or trust satisfies all the requirements of § 1.468B-1(c), the transferor is treated as transferring the assets to a qualified settlement fund.

Section 1.468B-1(j)(2)(i) provides that if a fund, account, or trust meets the requirements of paragraphs (c)(2) and (c)(3) of § 1.468B-1 prior to the time it meets the requirements of paragraph (c)(1), the transferor and administrator may jointly elect (a relation-back election) to treat the fund, account, or trust as coming into existence as a qualified settlement fund on the later of the date the fund, account, or trust meets the requirements of paragraphs (c)(2) and (c)(3) or January 1 of the calendar year in which all the requirements of paragraph (c) are met. If a relation-back election is made, the assets held by the fund, account, or trust on the date the qualified settlement fund is treated as coming into existence are treated as transferred to the qualified settlement on that date.

Section 1.468B-1(j)(2)(ii) provides that a relation-back election is made by attaching a copy of the election statement, signed by each transferor and the administrator, to (and as part of) the timely filed income tax return (including extensions) of the qualified settlement fund for the taxable year in which the fund is treated as coming into existence. A copy of the election statement must also be attached to (and as part of) the timely filed income tax return (including extensions), or *an amended return* that is consistent with the requirements of §§ 1.468B-1 through 1.468B-4, of each transferor for the taxable year of the transferor that includes the date on which the qualified settlement fund is treated as coming into existence. (Emphasis added).

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines

the term “regulatory election” as including an election the due date of which is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Section 1.468B-1(j)(2) expressly permits Taxpayer to make the relation-back election on an amended return for the taxable year ending Date 4. Taxpayer filed the amended return for the taxable year ending Date 4 on Date 7, before the expiration of the statute of limitations. Based on the information provided and the representations made, we conclude that Taxpayer timely filed the relation-back election under § 1.468B-1(j)(2) by filing an amended return for the taxable year ending Date 4. Therefore, Taxpayer does not need an extension of time under § 301.9100-3 to make the election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction item discussed or referenced in this letter. Specifically, we express no opinion as to whether the Fund is a qualified settlement fund within meaning of § 1.468B-1(c) or whether the relation-back election is otherwise valid under § 1.468B-1(j)(2).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Jeffrey G. Mitchell
Branch Chief, Branch 6
(Income Tax & Accounting)